C.S-1002

1

(3)

IN THE HIGH COURT OF CHHATISGARH AT BILASPUR

W.P NO 317/04 Division Bench

PETITIONER

P.R. No. 3185/04
Presented by Shri Ali Asgar
dated 10-9-04

SARITA DAS, D/O KHELAN DAS, AGE 24, R/O C/O DR RAVI KANT DAS, JARAHA BHATA BILASPUR (C.G)

V/S

RESPONDENTS

1 STATE OF C.G. THROUGH SECRETARY DEPARTMENT OF LAW, D.K.S. BHAWAN, MANTRALAYA, RAIPUR (C.G.)

2 PUBLIC SERVICE COMMISSION THROUGH ITS CHIARMAN, BHAGAT SINGH CHOWK, SHANKAR NAGAR ROAD, RAIPUR, (C.G.)

10/9/04

10/9/04

PETITION UNDER ARTICLE 226 OF THE CONSTITUION OF INDIA

(51)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

WRIT PETITION NO.3171 OF 2004

Sarita Das

Versus

State of Chhattisgarh and another.

ORDER FOR CONSIDERATION

Sd/-

CHIEF JUSTICE
27/09/2004

HON'BLE SHRI L.C. BHADOO, J.

Sd/-
L.C. Bhadoo
Judge

Post for pronouncement of Order 27th September,2004

Sd/-
Chief Justice
27th/09/2004.

(52) A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.S. Venkatachala Moorthy, CJ
& Hon'ble Shri L.C. Bhadoo, J.

WRIT PETITION NO.3171 OF 2004

Sarita Das

Versus

State of Chhattisgarh and another.

Present : Petitioner by Shri Ali Asgar, Advocate.
Respondent No.1 by Shri Prashant Mishra, Addl. A.G.
Respondent No.2 by Shri Abhishek Sinha, Advocate.

O R D E R
(Passed on 28th of September 2004)

The following order of the Court was passed by **A.S. Venkatachala Moorthy, CJ**: -

The petitioner who is a fresh Law Graduate prays this Court to issue a writ of certiorari to quash Rule 7(b) of Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994 (2001?) to the extent that it lays down that a candidate should be of 25 years of age to apply for a post in Lower Judicial Service. His grievance is that such a rule cannot be allowed to be there in view of the clear mandate of Supreme Court of India in the case of **All India Judges Association and others Vs. Union of India and others** reported in **AIR 2002 SC 1752.** Further case of the petitioner is that second respondent has now called for the applications from the candidates who are Law Graduates for the post of Civil Judge, Class-II who have completed 25 years of age.

(53)

2

(2) First respondent has filed a reply resisting the claims of the petitioner contending that in view of what has been stated in para 40 of the judgment in the case of **All India Judges Association** (Supra), the petitioner who in effect seeks only a clarification has to go before that Court and this Court may not entertain the writ petition. Alternatively, it is contended that fixing such minimum age has a reasonable nexus with the object sought to be achieved and therefore, eligibility criteria does not suffer from any legal and constitutional infirmity. According to this respondent the directions given by the Supreme Court in the above-referred case has been complied with and now the requirement of having practice not less than three years has been dispensed with. The first respondent has endeavoured to explain that by the time a person completes his law examination he will be 23rd / 24th year of age and after making necessary preparations for the competitive examination he becomes eligible for the test of Civil Judge Class-II on attaining the age of 25. After so explaining, the first respondent has concluded by stating that the rule prescribing the minimum age cannot be said to be discriminatory, arbitrary and unreasonable, and consequently the writ petition has to be dismissed.

(3) The second respondent namely Public Service Commission has filed a reply independently, but however putting forth the same points raised by the first respondent. The only extra point that has been raised by the second respondent is that the writ petition is liable to be dismissed for latches since the advertisement for calling of applications by second respondent was made as early as 19/08/2004, but the present petition

was filed only on 10/09/1994 and according to him there has been inordinate delay in petitioner approaching this Court.

(4) The State of Chhattisgarh was in fact originally a part of State of Madhya Pradesh till 01/11/2000. After formation of the new State, rules of Madhya Pradesh have been extended to be in force in this State. It is necessary and appropriate to refer to the relevant rule as it stood earlier.

In pursuance of the provisions contained in Proviso to Article 309 of the Constitution of India, the Government of Madhya Pradesh was pleased to make the rules for consideration of the judicial service and for regulating the recruitment and conditions of service of persons appointed to that service. The rules are called 'Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955'. According to Rule 19 no person shall be eligible for appointment of Civil Judge unless he/she is a Graduate of Law of any University and has practised at the Bar for not less than three years. That rule prescribes only maximum age as 30 years; however, the same was relaxed up to 32 years in case of candidates applying from the castes or tribes specified in the Constitution (Scheduled Castes) Order, 1950 or Constitution (Scheduled Tribes) Order, 1950.

(5) The said rules continued to be in force till 1995 when the Madhya Pradesh Lower Judicial Service (Recruitment and Conditions of Service) Rules 1994 came into force on 17/10/1994. The said rules (1994 Rules) repeal all rules corresponding to these rules, orders and resolutions, if any, and in force immediately before commencement in respect of matters covered by these rules.

Rule 7 of 1994 Rules lays down as under:

" **7. Eligibility.-** No person shall be eligible for appointment by direct recruitment to posts in category (i) of Rule 3 (i) unless :-

(a) he is a citizen of India;

(b) he has attained the age of 25 years and not completed the age of 35 years on the first day of January of the year in which applications for appointment are invited :

Provided that the upper age of limit shall be relaxable up to a maximum of five years if a candidate belongs to Scheduled Castes, Scheduled Tribes or other Backward Classes :

Provided further that the upper age limit of a candidate who is a Government servant (whether permanent or temporary) shall be relaxable up to 38 years;

(c) he possesses a degree in law of any recognized University;

(d) he has practised as an advocate for not less than three years on the first day of the January of the year in which applications for appointment are invited; and

(e) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment."

(6) The Government of Chhattisgarh issued Notification bearing No. 6700/21-A/P./2001/CG, dated 27th December 2001, extending the Madhya Pradesh Lower Judicial Service (Recruitment and Conditions of Service)Rules, 1994 to this State. The order reads thus :

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Order

1. (1) This order may be called the **Adaptation of Laws Order,2000.**

(2) it shall come into force in the whole State of Chhattisgarh on the First day of November, 2000.

2. The Laws as amended from time to time, specified in the Schedule to this Order, which were in force in the State of Madhya Pradesh immediately before the formation of the State of Chhattisgarh, are hereby extended to and shall be in force in the State of Chhattisgarh until repealed or amended. Subject to the modifications that in all the laws for the words "Madhya Pradesh" wherever they occur the word "Chhattisgarh" shall be substituted.

3. Any thing done or any action taken (including any appointment, notification, notice, order, form, rule, regulation, certificate or licence) in exercise of the powers conferred by or under the laws specified in the Schedule shall continue to be in force in the State of Chhattisgarh.

Schedule

Sl.No. (1)	Name of Laws (2)
1.	Madhya Pradesh Civil Court Adhiniyam, 1958.
2.	----------
15.	The Madhya Pradesh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994.
16.	-------

"

(Emphasis Supplied)

Now this rule is described as Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994 in the advertisement made by the second respondent rightly because the order referred (supra) does not say that the year must be substituted as 2001 instead of 1994. In fact the order should have been to the effect that the year also shall stand substituted as 2001.

(7) The Supreme Court in **All India Judges Association and others (Supra)** had occasion to examine various aspects/questions including conditions of service of subordinate judiciary. In that case the Supreme Court also considered the report of Shetty Commission and the question as to whether while appointing a person to the post of judicial service (Civil Judge, Class-II), it has to be insisted that such person should have atleast three years of experience as an advocate. The Apex Court answered in negative and directed all High Courts and the State Governments to amend their Rules so as to enable a fresh Law Graduate who may not even have put in even three years of practice, to be eligible to compete and enter the judicial service. We deem it necessary to extract herein the relevant paragraph in the said judgment.

> **" 32.** In the All India Judges's case , (1993 (4) SCC 288 at P.314), this Court has observed that in order to enter the Judicial Service, an applicant mist be an Advocate of at least three year's standing. Rules were amended accordingly. With the passage of time, experience has shown that the best talent which is available is not attracted to the Judicial Service. A bright young law graduate after 3 years of practice finds the Judicial Service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views

(58)

7

expressed before it by various authorities, that the need for an applicant to have been an Advocate for at least three years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned Amicus Curiae that it should be no longer mandatory for an applicant desirous of entering the Judicial Service to be an Advocate of at least three years' standing. We, accordingly, in the light of experience gained after the Judgment in All India Judges' case directs to the High Courts and to the State Government to amend their rules so as to enable a fresh law graduate who may not even have put in even three years of practice, to be eligible to compete and enter the Judicial Service. We, however, recommended that a fresh recruit into the Judicial Service should be imparted with training of not less than one year, preferably two years." (emphasis supplied).

(8) While it is the case of the respondents that in obedience to the directives of Supreme Court they are not insisting that the applicant should have three years standing at the Bar and it is complete compliance, learned counsel for the petitioner would contend that the rule insisting that a candidate applying for the post of Civil Judge, Class-II should have completed 25 years of age would go contra to the directives of Supreme Court since it is possible that there may be candidates who have passed the law degree but they are below 25 years of age, may be even 21, 22 or 23.

(9) If we carefully peruse the judgment of the Supreme Court of India in the case referred (Supra) it could be seen that the Supreme Court directed all the High Courts and the State Governments to amend their

Rules so as to enable a fresh law graduate to be eligible to apply for the post of Civil Judge, Class-II. It is not the case of the respondents that a student cannot obtain a law degree before he completes 25 years of age. All that they have stated in the reply is that generally a student completes law graduation during his 23rd/24th year and thereafter he prepares for the competitive examination and by that time he will be 25 years of age. If the rule is allowed to stand, then a person who secures a law degree at the age of 21 will have to wait for four years to become eligible to apply for a post in Lower Judicial Service. That being so, fixing minimum of 25 years of age cannot be said to be not contra to the directions given by the Supreme Court. Once we come to such a conclusion, the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994 fixing 25 years as the minimum age {Rule 7(b)} has to be quashed. In the result, Rule 7(b) of the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994 in so far as fixing minimum age as 25 years is hereby quashed and consequently it has to be declared that even those who have not completed 25 years, but have obtained a law degree of any recognized University can apply.

(10) Consequently, we direct the second respondent to make necessary publications prominently in the newspapers etc., as was done earlier referring to the earlier publication (19-08-2004) and informing the public that even persons who have not completed 25 years of age, but, possessing a law degree from any recognized University, can apply and for which purpose two weeks' time from the date of such advertisement should be granted. In the said advertisement it must also be made clear that the candidates who have applied already, need not apply again and

(60)

9

their application already made will also be considered taking the age limit as on 1st January 2005.

(11) In the result, the writ petition is allowed.

Sd/-
Chief Justice
28-9-2004

Sd/-
L.C.BHADOO
Judge

Copy of C.O.D.J
26/10/04 Received
26/10/04